(Submitted with the Consent of the Parties)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-857

BILLY JENKINS,

Appellant,

v.

STATE OF GEORGIA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

BRIEF OF THE AUTHORS LEAGUE OF AMERICA, INC. AS *AMICUS CURIAE*

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IN THE

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October Term, 1973

No. 73-557

BILLY JENKINS,

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STATE OF GEORGIA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

BRIEF OF THE AUTHORS LEAGUE OF AMERICA, INC. AS *AMICUS CURIAE*

Interest of The Authors League

The Authors League is a national society of professional writers and dramatists. Several of them write screenplays; and many books and plays by its members are adapted for motion pictures. One of the League's principal purposes is to express the views of its members in cases involving freedom of speech and press, and the freedoms to read books and view plays and films. The decision of the Supreme Court of Georgia drastically curtails these freedoms, and restricts the constitutional rights of authors, screenwriters, directors and film producers.

Summary of Argument

I. CARNAL KNOWLEDGE is not obscene because it is a work of serious literary and artistic value. Its recognition by professional critics as a genuine effort at literary and artistic expression establishes that value. Serious literary or artistic value cannot be negated by "community standards", the votes of jurors, or the personal tastes of judges.

II. No criminal prosecution for obscenity should be permitted unless a work has previously been adjudicated obscene in a civil, adversary proceeding. Prior civil judicial determinations of obscenity are necessary to prevent self-censorship by theatre owners, booksellers and librarians, born of uncertainty and fear or threat of criminal prosecution. Requiring prior civil determinations would not protect those who distribute hardcore pornography surreptitiously or for brief periods. Motion Picture Association "ratings" should not be applied in obscenity cases.

III. Any work that is not pruriently appealing or patently offensive under a state's "community standard" cannot be held obscene by applying local community standards. If local standards were held to prevail, a non-obscene film or book, acceptable under the state standard, nevertheless could be prosecuted repeatedly under differing local standards. The state-wide standard need not prevent the dissemination of certain works in communities where they are accepted.

Preliminary Statement

We agree with Appellant that Sec. 26.2105 (Ga. Code Ann.), prohibiting films that contain acts of "public indecency", is unconstitutional; and that he was denied due process, *inter alia*, by the failure to charge him with two offenses on which his conviction may have rested. We do not argue these points.

Nor do we argue the Authors League's fundamental position on obscenity and the First Amendment, which it has advocated to the Court in prior *amicus curiae* briefs beginning with *Roth* v. *United States*, 354 U.S. 476 (1957), and which it still maintains is required to give adequate protection under the First Amendment. That position is the one adopted by Justices Brennan, Stewart and Marshall in *Paris Adult Theatre I* v. *Slaton*, 413 U.S. 49, 112, 113. We do, however, note its application to the issue posed by this appeal. If a theatre owner had any doubts about a film's status under a statute protecting juveniles, he would prevent them from entering the theatre (as is now done). If he had any doubts about a film's status under a "thrusting" statute, he would avoid advertising or displays that might intrude offensive materials on unwilling adults. But he could not be prevented, by threats of prosecution (or self-censorship born of uncertainty), from exhibiting films of literary and artistic value to adults who chose to see them—for the exhibition of a film, "obscene" or not, to adults willing to see it could never be prosecuted as a crime.

POINT I

As a Work of Serious Literary and Artistic Value (and, therefore, of Redeeming Social Value) CARNAL KNOWLEDGE Cannot be Held Obscene.

(i) Serious Literary or Artistic Value Cannot be Judged by "Community Standards"

CARNAL KNOWLEDGE does not appeal to prurient interest and is not patently offensive in depicting sexual conduct. But the rights of adults to see the film in Albany, Georgia do not depend on whether it passes these tests of the *Miller* standard. (*Miller* v. *California*, 413 U.S. 15 [1973]) CARNAL KNOWLEDGE is entitled to First Amendment protection in Albany and throughout the United States under the third *Miller* test—i.e. because it is a work of serious literary and artistic value. It therefore satisfies the "minimum" which entitles even prurient, patently offensive works to "merit First Amendment protection" under *Miller*; and it therefore has "redeeming social value" under the Georgia statute. So long as restraints may be imposed on the dissemination of allegedly "obscene" books or films to willing adults, the serious value test is essential as a separate safeguard for the First Amendment rights of authors, film producers, distributors and adults who choose to read or view a book or film. For as Justice Harlan noted, even among the "masterpieces" there are works that may be judged pruriently appealing (*Manuel Enterprises* v. *Day*, 370 U.S. 478, 487) and patently offensive.

Under *Miller*, the serious literary or artistic value of a book or film cannot be negated by state or local "community standards." Moreover, such values have never depended on approval by a majority, which is what the "consensus"

of a community standard reflects. Majorities, per se, are not qualified to judge the literary or artistic value of books; for example, 58% of the adults queried in a 1969 Gallup poll said "they had never read a book from cover to cover . . ." (PUBLISHERS WEEKLY, June 2, 1969, p. 59).

The motion picture is an art form no less sophisticated than literature, the stage or painting. Twelve jurors bring no greater expertise to CARNAL KNOWLEDGE than they would to ULYSSES, WAITING FOR GODOT or LES DESMOISELLES D'AVIGNON. Under the First Amendment these works would have serious literary value in Maine, Mississippi or Georgia even though juries in Bangor, Biloxi or Albany voted to the contrary.

(ii) Serious Literary or Artistic Value, Recognized by Professional Critics, Cannot be Negated by Judges' Personal Tastes

Judges who never read ULYSSES or found it "hard to believe" the book "possesses literary importance"*, nevertheless would accept it as a work of serious literary and artistic value. Despite their contrary personal tastes, they would concede that Joyce's novel or LADY CHATTERLY'S LOVER have such values because professional critics, while differing in their evaluations, recognize these books as genuine—"serious"**—literary or artistic "expressions" which cannot be dismissed as hardcore pornography seeking redemption with "a quotation from Voltaire in the flyleaf . . ." (413 U.S. at p. 25).

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* From a review by the Springfield REPUBLICAN, quoted in BOOK REVIEW DIGEST (H. W. Wilson Company, 1934).

** Obviously "serious" connotes some discernable quantum of literary or artistic value, rather than a dictate that the work must be sober rather than comic, or didactic rather than entertaining. GARGANTUA AND PANTAGRUEL is "a comic and satirical masterpiece." Encyclopedia Britannica, 1971; Vol. 18, p. 970); as such, it has "serious" literary and artistic value under *Miller*.

CARNAL KNOWLEDGE is a work of serious literary and artistic value:

> "Not only is the film, overall, the best acted in years; it is also the most mature of all those American films that have attempted to deal with the subject of sex in these ultra-liberated cinematic times." SATURDAY REVIEW (Hollis Alpert); July 3, 1971, p. 18.
>
> "Obviously, the film is not for everyone, but it struck me as Nichols' most controlled piece of direction, bringing a mature perspective to a funny, bitter deeply probing examination of immature behavior." AMERICA ("Published by Jesuits of the United States and Canada") July, 1971, p. 48.

These are two of the fourteen national magazine reviews of CARNAL KNOWLEDGE indexed by READERS GUIDE TO PERIODICAL LITERATURE for March 1971-February 1972 (p. 764) Some critics agreed with Mr. Alpert's highly favorable judgment; the film appeared on the "10 Best Films" lists of several reviewers. Other reviewers were less favorably impressed; Paul D. Zimmerman's review in NEWSWEEK concludes "what might have been a great film survives simply as a very good one." July 5, 1971; p. 71. What is significant is that all of the reviewers considered, and evaluated, CARNAL KNOWLEDGE as a film of serious literary and artistic value. They considered it a genuine effort at literary and artistic expression, regardless of their differing evaluations of its success in realizing its aesthetic objectives. These reviews, and others in newspapers across the country, reflect Judge Hawes' view that "Certainly (CARNAL KNOWLEDGE) is not the kind of hard-core pornography we removed from public consumption in *Slaton* v. *Paris Adult Theater I.*"

We do not contend that professional critics are infallible arbiters of literary or artistic value. Sometimes they have failed to perceive these values in works whose merits were later widely hailed. And we do not believe that any work should be convicted of obscenity on the basis of critics' reviews. But there is a strong presumption in favor of First Amendment protection for books, films and other works. Consequently, when recognized, professional critics—in their reviews—consider that a film or book is a genuine work of literary or artistic expression then, we submit, it has sufficient "value" to entitle it to First Amendment protection under the third Miller guideline (and therefore, under Georgia's "redeeming social value" test). We believe that the reviews of even a minority of such critics are sufficient to establish that value under *Miller*, and are competent evidence of their evaluations. *Mattox* v. *News Syndicate*, 176 F.2d 987, 903; cert. den. 338 U.S. 858.

Although the Supreme Court of Georgia viewed the film in order to make an "independent constitutional judgment on the facts" (*Jacobellis* v. *Ohio*, 378 U.S. 184, 190) it ignored the opinions of professional critics for well known national magazines and major newspapers. Rather, the four majority judges substituted their personal tastes and subjective judgments for these independent, professional appraisals, on the critical issue of "value". The four judges utterly failed to explain their conclusion that CARNAL KNOWLEDGE lacked serious literary or artistic value. Nor did the four explain how their three dissenting colleagues erred in concluding that the film possessed such value under *Miller*. Had the jurors divided in that proportion on this constitutional judgment of the facts, there would not have been a conviction.

POINT II

A Prior Civil Determination of Obscenity Must be Required to Prevent Censorship by Uncertainty.

(i) Censorship by Uncertainty

Billy Jenkins was convicted and sentenced for making the same judgment reached by 3 judges—43%—of Georgia's highest court. He thought, CARNAL KNOWLEDGE was not "obscene". But his failure to correctly predict how a jury (and a bare majority of the state's Supreme Court) would evaluate the film, and its literary and artistic values, subjected him to serious penalties. His fate carries a chilling message to theatre owners throughout the country. Moreover, no Georgia exhibitor could determine from the majority opinion what specific elements of CARNAL KNOWLEDGE led judges to the astounding conclusion it was prurient, patently offensive or—most amazing—lacked serious literary or artistic value. Thus, no theatre owner could determine whether the next film challenged by prosecutors or police would bring him to the same fate.*

Most theatre owners, like librarians and booksellers, cannot risk predicting whether controversial films (or books) will be ruled obscene in crimnial proceedings commenced after they have exhibited (or distributed) such works. Aside from the danger of jail or fines, they "are naturally reluctant to incur the risk of *criminal prosecution* since that entails adverse publicity and physical and mental

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* Just as no bookseller or librarian could determine, from the welter of conflicting opinion on TROPIC OF CANCER by often-divided state courts, whether the next controversial book (e.g. FANNY HILL) would be ruled "obscene"; an uncertainty compounded by the fact that some courts which ruled TROPIC obscene held FANNY HILL was not, while others shifted in the opposite direction.

strain" regardless of the outcome; nor can they afford the heavy financial costs of a prosecution or appeal, which they must pay even though they prevail. (emphasis added) *Bunis* v. *Conway*, 17 A.D.2d 207, 210; see also, *Bantam Books* v. *Sullivan*, 372 U.S. 58, 65.

Consequently, many theatre owners will not exhibit non-obscene films that are controversial, or they can be coerced by threats of prosecution into rejecting such films despite serious literary and artistic value that entitles them to protection under the *Miller* standard. Adults in their communities who choose to view these films thus are deprived of that right; and producers are deprived of their constitutional freedom to exhibit these motion pictures in such communities. Moreover, producers will not risk substantial investments in films that may be barred in various communities through such self-censorship; authors and directors thereby are prevented from creating works of serious literary and artistic value which deal with sexual themes.

This self-censorship, born of uncertainty, also afflicts books. See: *Smith* v. *California*, 361 U.S. 147; *Bantam Books* v. *Sullivan*, *supra*. And it is by no means confined to "hardcore" pornography. As Justice Gunther's opinion emphasizes, the Georgia decision is further proof that those who exhibit or distribute works of widely-hailed literary and artistic value* also can be subjected to the stigmas and strains of criminal prosecutions, the factors that produce self-censorship at the grass roots in most instances (even though, theoretically, a series of appeals might someday vindicate the theatre owner, librarian or bookseller). As this Court stated in *Smith* v. *California*, this self-censorship

* e.g. TROPIC OF CANCER, LADY CHATTERLY'S LOVER, ULYSSES, MEMOIRS OF HECATE COUNTY.

"would be a censorship affecting the whole public, hardly less virulent for being privately administered. Through it, the distribution of all (works), both obscene and not obscene, would be impeded." (361 U.S. at 154)

(ii) A Prior Civil Determination of Obscenity Should be Required

As Chief Justice Burger observed in *Miller*, determining whether a work is obscene requires "resolving the inevitably sensitive questions of fact and law . . .", which must be done under "the jury system, accompanied by the safeguards that judges, rules of evidence, presumption of innocence and other protective features provide . . ." (415 U.S. 26) But so long as states can defer determinations of obscenity until criminal prosecutions of theatre owners or booksellers, *after* they disseminate the work—their self-censorship deprives producers, authors and audiences of any judicial determination in most instances. And theatre owners and booksellers will continue to be denied their right to meaningful notice, in advance, that a particular work is, indeed, obscene under *Miller*.

The Authors League respectfully urges the Court, as we have in earlier amicus curiae briefs*, to require the procedure that will protect these First and Fourteenth Amendment rights—i.e. to prohibit the criminal prosecution of a theatre owner, bookseller or librarian for exhibiting a film or distributing a book, unless the work has previously been adjudicated "obscene" in a full, adversary civil proceeding under a statute such as New York's *Sec.*

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* *Times Film Corporation* v. *City of Chicago*, 365 U.S. 43 (1961); *Ginzburg* v. *United States*, 383 U.S. 463 (1966); *Ginsberg* v. *New York*, 390 U.S. 629 (1968).

6330, Civil Practice Act and Rules. Such an adjudication should be made, as Chief Justice Burger indicated, under the jury system and accompanied by the various safeguards he described.

As Chief Justice Burger stressed in *Paris Adult Theatre*, this proceeding is the most effective method of protecting the First Amendment rights of theatre owners (and booksellers or librarians) since it gives them "the best possible notice, prior to any criminal indictments, as to whether the materials are unprotected by the First Amendment and subject to state regulation." See *Kingsley Books, Inc.* v. *Brown*, 354 U.S. 436, 441-444 (1957)" (*Paris Adult Theatre I* v. *Slaton*, 413 U.S. 49, 55 [1973]).

And in *Miller* v. *California*, Justice Douglas concluded that the First Amendment required this safeguard: "My contention is that until a civil proceeding has placed a tract beyond the pale, no criminal proceeding should be sustained." With a prior civil determination, "a vague law has been made specific", and a prosecution for sales made after that determination "could not violate the time-honored 'void-for-vagueness' test." (413 U.S. 41, 42).

The requirement of a prior civil proceeding would prevent self-censorship by fear or threat of criminal prosecution. Theatre owners, and booksellers or librarians, would know they could not be prosecuted for disseminating works that had not been adjudicated obscene in a civil proceeding. And the adversary civil process provides a more appropriate forum for determining whether the public will or will not be permitted to view a film or read a book. Without the stigma of a criminal prosecution or the threat of jail, theatre owners and librarians would cooperate with producers and publishers in establishing the non-obscenity

of challenged works; and the parties could focus on the primary issue of "obscenity".

(iii) The Requirement of a Prior Civil Proceeding Would not Immunize the "Bootlegging" of Obscene Materials

It is suggested that requiring prior civil determinations would protect those who distribute hardcore pornography that is patently obscene under *Miller*. Immunity from prosecution would result, the theory goes, when such materials are distributed surreptitiously or for a short time, since civil proceedings could not be initiated before their distribution was completed or well under way.

However, the protection of a prior civil determination can be related to a reasonable opportunity for the state to initiate a timely proceeding. For example, films of reputable motion picture producers are publicly announced and advertised in a community in advance of opening, and exhibited at known and permanent theatres. Prosecutors and police are thus forewarned of when and where each film will be presented. From published information, or a prior screening, they have ample opportunity to initiate civil proceedings before the motion picture reaches any substantial audience. Indeed, even a viewing of the opening performance gives sufficient time. Similarly, books by reputable publishers are publicly announced, advertised and reviewed in national trade journals such as PUBLISHERS WEEKLY weeks and months before copies are sold in any bookstore.

Where the circumstances of distribution would not permit competent state authorities to move promptly in court, requirement of a prior civil determination can be conditioned on submission of a copy, or offer of a screening, to

the state's attorney general a short time before exhibition or distribution commences.* Any requirement for submission must be subject to First Amendment safeguards to prevent direct or indirect prior censorship. *Freedman* v. *Maryland*, 380 U.S. 51, 60; *Kingsley Books* v. *Brown*, 354 U.S. 51. The sole purpose of submission would be to provide reasonable time, when it was not otherwise available, for the commencement of a civil proceeding against a work which the attorney general believed: (i) taken as a whole appealed to prurient interest; *and* (ii) portrayed in a patently offensive way specifically defined sexual conduct such as "ultimate sexual acts"; *and* (iii) taken as a whole did not have serious literary, artistic political or scientific value. (415 U.S. at. p. 24).

Submission would not be compulsory; anyone would be free to disseminate any work without complying. But in that event, prior civil determination of obscenity would not be required as a condition for criminal prosecution—unless the film or book had been announced publicly in advance of its dissemination. For the reasons indicated in Point III, the requirement of prior civil determinations, including voluntary submission of works in advance of distribution, should be applied on a statewide basis. Producers and publishers should not be required to send copies, or provide screenings, to thousands of villages, towns, counties and cities throughout the United States.

(iv) Motion Picture Association "Ratings" Should Not be Applied in Obscenity Cases

The Motion Picture Association of America, a trade association of major companies, operates a classification system for motion pictures. "X-rated films are those with content to which no one under 17 is supposed to be ad-

* For federal statutes, submission to the U.S. Attorney General should suffice.

mitted, while R-rated films keep out those who are under 17 except when accompanied by an adult." (New York Times, April 20, 1971; p. 1). Minors are admitted to films rated "G", and those rated "GP" (suggesting "parental guidance"). Not all films are submitted to the Association for "rating".

There have been suggestions that the "X" rating might be applied in obscenity prosecutions as evaluative evidence, or as an indication the exhibitor had "notice" that such films were "obscene" under state statutes and the *Miller* standard. (cf. Washington Star-News, December 10, 1973, p. 1). Any judicial application or recognition of the "rating" system would gravely impair the First Amendment rights of producers, exhibitors and audiences.

The X and R ratings given to motion pictures do not reflect any judgment by the Association's Rating Administration that such films are "obscene" under obscenity statutes, applied generally or to children. A rating only reflects the conclusion of Association personnel—under vague, imprecise and sometimes malleable standards—that children should not be admitted or must be accompanied by an adult. Violence, rather than sexual content, may earn an "X" rating. X ratings have been given to non-obscene works of serious (indeed superior) literary and artistic value, which were neither pruriently appealing or patently offensive in describing sexual conduct—e.g. MIDNIGHT COWBOY and CLOCKWORK ORANGE. And R ratings have been given to works of highly regarded artistry, without any prurient appeal or patently offensive depiction (or violence), such as SUMMER OF '42. (FILM RATINGS FLUNK OUT, Thomas Thompson, LIFE; August 20, 1971; p. 50B, 54)*

* Mr. Thompson made a suggestion also advanced by others: "My opinion is that the system should be simplified—drastically. There should be only two rating symbols: family films for everybody and adult films for selected audiences." (p. 57).

The Association's rating system has produced substantial restraints on the exhibition of some motion pictures, and on the First Amendment rights of exhibitors, audiences and those who create films. Several newspapers refuse advertisements for any X-rated film, regardless of its content or nature of the advertisements. This "fact (that) makes it extremely hard for exhibitors to make the showing of such films locally known." (New York Times, April 20, 1971; pp. 1, 48). A 1970 survey disclosed that 47% of theatres participating in the voluntary system would not play any X-rated picture; and participating theatres represented 89% of the 13,000 in this country. (Vincent Canby, New York Times, March 22, 1970; IV, p. 1) Moreover, the rating system stimulates changes in the content of some films, in advance of their release. (cf. FILM RATINGS FLUNK OUT, *supra*; Vincent Canby, New York Times, *supra*.)

As this Court indicated in *Smith* v. *California*, 361 U.S. 147, these restrictive consequences are "hardly less virulent", because the machinery that generates them is "privately administered", and they "affect(ing) the whole public" (at p. 154). The ratings of such a private system should not be applied directly or indirectly in the enforcement of obscenity statutes. *Smith* v. *California*, *supra*; *Bantam Books* v. *Sullivan*, 372 U.S. 58. To apply them would give added sanction to private decisions that can adversely affect First Amendment rights of exhibition for many films. These decisions are made by a trade association's employees, not a judge and jury; they are not subject to the safeguards which must govern judicial determinations of obscenity; and they cannot be appealed to appellate courts.

POINT III

Works Not Obscene Under a State-Wide Community Standard Cannot be Held Obscene under "Local" Standards.

(i) CARNAL KNOWLEDGE is not "Prurient" or "Patently Offensive"

Since CARNAL KNOWLEDGE is a work of serious literary and artistic value, it could not be ruled obscene even if, taken as a whole, it appealed to prurient interest and it depicted sexual conduct in a patently offensive manner. However, it is not guilty of either prurient appeal or patent offensiveness. Like " 'dominance' of the theme", both tests present "question(s) of constitutional fact" which this Court must decide. *Kois v. Wisconsin*, 408 U.S. 229, 232. By no stretch of the first two *Miller* constitutional standards can it be said that CARNAL KNOWLEDGE, taken as a whole, appeals to the prurient interest of Georgia's "average man"; or that the two or three brief scenes which may have offended the personal sensibilities of the Georgia Court's majority constituted patently offensive portrayals of sexual conduct.

(ii) The First Amendment Prohibits a Crazy-Quilt System of Local Censorship

In *Miller*, this Court decided that a state-wide, rather than a national, community standard could be applied in determining whether a film or book appealed to prurient interest or depicted sexual conduct in a patently offensive way. However, the Supreme Court of Georgia—contrary to those of New York and California*—held that juries

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* *New York* v. *Heller* (not off. reported); *In re Giannini*, 69 Cal. 2d 563.

could find a film or book pruriently appealing and patently offensive under local community standards even though it was not pruriently appealing or patently offensive under the state-wide standard. We submit this is incorrect. *Miller* did not reach that conclusion. For example: Chief Justice Burger stressed the need to carefully limit "state statutes"; to define conduct proscribed by the "applicable state law"; and to limit a "state offense" to works failing all three tests of the *Miller* standard. (413 U.S. 24)

There are thousands of local communities in the United States. If a motion picture's (or book's) alleged prurient interest or patent offensiveness could be established separately, under the differing standard of each community in which it was disseminated, reputable motion picture companies and publishers would be compelled to eschew non-obscene films or books likely to arouse opposition in some communities because of sexual themes. These companies produce and distribute works for national audiences. They cannot afford to risk the loss of several markets through self-censorship by exhibitors and booksellers, born of fear or threat of prosecution under a vast hodgepodge of local standards. Nor can they afford to defend the innumerable prosecutions that could be spawned by such a crazy-quilt system of local censorship. If prurient appeal and patent offensiveness are determinable under "local" community standards, then an appellate decision absolving a work distributed in one city still leaves it exposed to many more prosecutions in the same state—under differing standards of other cities, towns, villages and counties.

We respectfully urge the Court to confirm that a motion picture or book which is not pruriently appealing or pat-

ently offensive under a state's community standard cannot be held obscene by applying local community standards. It also bears confirming, for those who have misinterpreted *Miller*, that determination of the serious literary or artistic value of a work does not involve application of a state-wide or local "community standard". We also urge the Court to explain that the "community standards" applied in determining prurient appeal or patent offensiveness are the average man's "values", which the jury considers in assaying the work's "impact on the average person" (413 U.S. 33). Many reporters and legislators have erroneously assumed that a "community standard" is a set of rules, established by local legislation, which supplants state obscenity statutes and redefines "obscenity" in each local community.

(iii) A State-Wide Standard Need Not Bar Works from Communities Where They are "Acceptable"

Some see a possible dilemma: i.e. that a state-wide community standard might bar some works from a few communities where they would be "acceptable" under "local" standards. But even that would involve a far less drastic restriction (if any) on the production, publication and dissemination of non-obscene works, than a construction which allowed films or books acceptable under the state standard to be prosecuted repeatedly by applying differing local community standards. Producers, publishers, theatre owners and booksellers need the certainty—guaranteed, we believe, by the First and Fourteenth Amendments—that a film or book acceptable under the state standard

can be disseminated in any of its communities without fear of multiple prosecutions.*

Moreover, the First Amendment offers a simple resolution of this largely theoretical dilemma: that is, a holding (i) that any film or book which is not pruriently appealing or patently offensive under a state's community standard cannot be held obscene by applying local community standards; *and* (ii) that any film or book which is not pruriently appealing or patently offensive under the standards of a local community can be distributed within that community even though the work is not acceptable under the state community standard.

CONCLUSION

It is respectfully submitted that the judgment of the Supreme Court of Georgia should be reversed.

Respectfully submitted,

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* Under *Heller and Giannini*, a producer would need only one appeal to each state's highest court to establish his First Amendment right to exhibit a challenged motion picture in New York and California. If "local" community standards are held to prevail, he might need 58 appeals in California and 62 in New York —*if* only county standards applied. If city, town and village standards also applied, he might need hundreds of appeals. On a nation-wide level, the choice lies between a maximum of 50 appeals under state standards and thousands of appeals under local standards. For example: in 1972 there were 3,044 counties, 18,517 municipalities and 16,991 townships in the United States. [1973 Statistical Abstract of the United States, p. 412]